IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3928 of 2007
With
CIVIL APPLICATION No. 10581 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NEW INDIA ASSURANCE CO. LTD. - Appellant(s)
Versus
KANAKBA BHAVUBHAI JADEJA & 2 - Defendant(s)

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Appearance :
MR SANDIP C SHAH for Appellant(s) : 1,
MR TUSHAR L SHETH for Defendant(s) : 1,
None for Defendant(s) : 1.2.1, 1.2.2, 1.2.3, 1.2.4, 1.2.5,1.2.6 - 3.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 04/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant herein is the insurer of Truck No.PB-13-E-3173 which met with an accident on 7.6.2003 near village Vadod on Ahmedabad-Rajkot highway. The facts of the case are that while the truck was travelling from Rajkot to Ahmedabad side, it dashed against S.T.Bus No.GJ-18-V-2585 in the early hours of 7.6.2003. The said bus had a breakdown and was parked on the side of the road. The deceased was one of the passengers of the bus and was waiting in front of the bus waiting for another bus for onward journey. At that time, the truck came from Rajkot side and dashed against the bus from behind. After dashing with the bus crossed the centerline, further crossed the other side road and landed into a ditch. Because of the impact, the bus also went off the road on the left side and landed in ditch. FIR came to filed with Joravarnagar Police Station by one Pravinbhai Nathabhai Patel narrating the details as to how the accident occurred. Four other passengers waiting for a bus for onward journey standing behind the bus got crushed between the truck and bus in the accident and lost their lives.

1.1. Because of death of Bhavubha Jilubha Jadeja, his legal representatives and heirs preferred Motor Accident Claim Petition No.506 of 2003 before Motor Accident Claims Tribunal (Aux.) Rajkot and claimed a

compensation of Rs.15 lacs. The deceased Bhavubha was serving with State Reserve Police and was drawing a salary of Rs.7000/- per month. He also owned agricultural lands and was earning Rs.4,000/- to 5,000/- per month therefrom. The claimants are the widow and minor children of the deceased besides his mother (claimant no.6).

2. The claim was preferred against the owner and insurer of the truck as well as the S.T.Corporation. The owner of the truck chose not to contest the claim petition. Original opponent no.3 – present appellant filed written statement at Exh.18 denying the averments in the claim petition and raised a plea that the driver of the bus was responsible for the accident. By way of an alternative plea, it was pleaded that contributory negligence of the bus driver should be taken into consideration.

2.1. S.T.Corporation filed its written statement at Exh.26 raising similar pleas.

3. After considering the evidence led by the parties, the Tribunal came to the conclusion that the truck driver was solely responsible for the accident. For arriving at this conclusion, the Tribunal relied on the fact that the driver of the truck had not deposed before it and therefore, adverse inference can be drawn. The Tribunal also relied on the evidence of the first informant and the copies of FIR

and panchanama and ultimately fixed the liability for the accident on the driver of the truck.

3.1. The Tribunal accepted the income of the deceased at Rs.7,000/- per month at the time of his death and assessed the prospective income at Rs.10,500/- per month. The Tribunal deducted Rs.3,500/- from the income as expenditure on self by the deceased and assessed the dependency loss at Rs.7,000/- per month i.e. Rs.84,000/- per annum. The Tribunal adopted a multiplier of 13 and assessed the dependency loss at Rs.10,92,000/-. The Tribunal awarded Rs.20,000/- towards the loss of estate and Rs.2,000/- for funeral expenses and thus awarded total amount of Rs.11,14,000/- as compensation to the claimants with interest @ 7.5% p.a.

3.2. The insurer has preferred this appeal mainly to challenge the finding of the Tribunal on negligence aspect and on the quantum aspect as far as it relates to adopting of the multiplier.

4. The appellant is represented by learned advocate Mr.Sandip Shah and the respondents are represented by learned advocate Mr.Tushar Sheth appearing on caveat. In facts and circumstances of the case, the appeal is admitted and taken up for final hearing with consent of the parties and learned advocate Mr.Sheth waives service of notice. We are provided with necessary copies of relevant evidence by learned advocate Mr.Shah for the appellant.

5. Learned advocate Mr.Shah submitted that the accident occurred in early morning hours when there was darkness. There is no evidence that the bus was parked with its parking lights on or there were any signals to caution the traffic about the stationary vehicle and therefore, the Tribunal erred in holding that the truck driver was solely negligent and responsible for the mishap.

5.1. Mr.Shah submitted further that the deceased was aged 39 and the Tribunal has adopted the multiplier of 13. In light of the decision in case of T.N.State Transport Corpn.Ltd. V/s S.Rajapriya and others, reported in (2005)6 SCC 236, a lesser multiplier ought to have been adopted by the Tribunal. He, therefore, submitted that the appeal may accordingly be allowed.

6. Learned advocate Mr.Tushar Sheth has opposed this appeal. According to him, the principle of res-ipsa-loquitur would be applicable. The truck was driven with such a great speed that after the impact with a stationary bus, it travelled on the wrong side crossing over the divider and the on coming road and landed in a ditch. The impact was also so great that the bus was also pushed off the road into a ditch. The deceased was standing in front of the bus and sustained fatal injuries. Mr.Sheth submitted that all these factors have come on record and have been considered by the Tribunal. Mr.Sheth submitted that

the driver of the truck has not been examined who could have been the best person to throw light on question as to what factors led to the accident. Mr.Sheth, therefore, submitted that the Tribunal was justified in holding that the truck driver was solely negligent and responsible for the accident.

6.1 Mr.Sheth also submitted that the deceased was aged 39. He would have worked for at least other 20 to 21 years and therefore, the Tribunal was justified in adopting multiplier of 13 which would take care of the principles laid down in the case of T.N.State Transport Corpn. Ltd. (supra) relied upon by the learned advocate for the appellant, and, therefore, the appeal may be dismissed.

7. We have taken into consideration the rival side versions and have considered the copies of evidence produced before us by learned advocate for the appellant.

8. Focussing our attention on the question of negligence, we find that the driver of the truck has not been examined. The driver of the truck would have been the best person who could have thrown light on the question as to how the accident occurred. FIR and panchanama are on record. FIR is at Exh.37. Panchanama of place of incident is at Exh.38. The FIR is given by Pravinbhai Nathabhai Kanbi, an independent person who has given description of the incident and he says that because of breakdown, the

bus was parked on side of the road. The passengers were waiting for another bus for onward journey. At that time, the truck came from behind and dashed against the stationary bus. Four of the passengers standing behind the bus got crushed between the truck and the bus and succumbed to the injuries. The deceased was standing in front of the bus. He also sustained injuries and died on the spot. After the impact, the truck went towards the right side crossing the centerline and the oncoming road and landed into a ditch. The bus also went off the road on the left hand side because of the impact. This speaks volumes about the speed at which the truck was travelling in the darkness of night.

8.1. There is no evidence worth a name to show that the bus was parked with its lights on or with its lights off but fact remains that the bus was parked on the left hand side of the road. The panchnama indicates the width of the road to be 60 ft. There is evidence to show that the truck came at a high speed. This is reflected even from panchanama of the place of incident, because, from the place of incident, the truck has travelled on the wrong side for a distance and because of the impact, the bus has also gone off the road on the left hand side to a distance of 100 ft. The truck was, therefore, driven at a very high speed. The driver of the truck has not deposed before the Tribunal as to how the incident occurred, whereas he could have been the best person to do so.

8.2. It is expected of any driver to drive a vehicle in a manner that he is able to control the vehicle and avert any mishap in case of any unanticipated eventuality. A driver has to anticipate the unanticipated. Driving of a vehicle in a manner that the driver is not able to control it in such unanticipated eventualities is per-se negligence on the part of the driver. Then there remains only a question of degree of negligence. Here, there is evidence at least to show that the truck was being driven at a very high speed in the dark i.e., early morning hours of the day in question. The bus was parked on the left hand side of the road which would indicate that the driver of the bus was careful enough to park the vehicle in a manner so as not to cause any obstruction to the traffic. The blood patches are found on left edge and even out side the left edge of road only to show the place of impact where the victims suffered the impact. This would mean that the truck was being driven not only at a very high speed but also it went off the left edge of the road at the time of impact. In our view, therefore, the Tribunal was justified in holding that the truck driver was solely responsible for the accident. We do not find any reason to interfere with this finding and uphold the same.

9. So far as quantum aspect is concerned, the deceased was working with State Reserve Police and his salary slip is produced at Exh.36 on basis of

which his income is assessed by the Tribunal. The Tribunal considered the prospective income at Rs.10,500/- per month which, in our opinion, is just and reasonable considering the age of the deceased and length of service that he had ahead of him. The dependency assessed at Rs.7000/- after deducting 1/3rd of the income of the deceased is also reasonable. So far as multiplier aspect is concerned, in our view, considering the principles laid down by the Apex Court in the case of T.N.State Transport Corpn.Ltd. (supra), it cannot be said that the Tribunal adopted a higher multiplier or that an error is committed in adopting the multiplier. Under the circumstances, we are of the view that the Tribunal was right in holding that the dependency loss to the claimant was Rs.84,000/- p.a., and adopting multiplier of 13, the loss can be assessed at Rs.10,92,000/-. There is hardly any scope for interfering with the quantum of compensation under this head. So far as the compensation for loss of estate and funeral expenses are concerned, that are also reasonable and call for no interference in exercise of appellate jurisdiction.

10. In light of the foregoing discussion, we do not find any merit in the appeal. Appeal, therefore, must fail. Stands dismissed. No order as to costs. The amount of Rs.25,000/- deposited with this Court be transmitted to the Tribunal forthwith.

11. In light of the dismissal of the appeal,

civil application stands disposed of.

(A.L.DAVE, J)

(SHARAD D DAVE, J)

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